

read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 6, 1975: Yeas 125, Nays 0; passed by the Senate on May 16, 1975: Yeas 30, Nays 0.

Approved May 27, 1975.

Effective May 27, 1975.

AUCTIONEERS—REGULATION

CHAPTER 320

H. B. No. 1925

An Act relating to regulation of auctioneers; providing penalties; repealing Section (1) of Article 19.01, Chapter 19, Title 122A, Revised Civil Statutes of Texas, 1925, as amended; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Definitions

Section 1.²⁰ For the purpose of this Act:

- A. "Auction" means the sale of any property by competitive bid.
- B. "Person" means an individual, partnership, company, corporation, association, or other group, however organized.
- C. "Property" means any property, tangible and intangible, real, personal, or mixed.
- D. "Auctioneer" means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at auction.
- E. "Secured party" means a person holding a security interest.
- F. "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.
- G. "Licensee" means any person holding a license under this Act.
- H. "Applicant" means any person applying for a license hereunder.

Exempt transactions

Sec. 2.²¹ The provisions of this Act shall not apply to the following transactions:

- (1) a sale conducted by order of any United States court pursuant to Title 11 of the United States Code relating to bankruptcy;
- (2) a sale conducted by an employee of the United States or the State of Texas or its political subdivisions in the course and scope of his employment;
- (3) a sale conducted by a charitable or nonprofit organization;
- (4) a sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a regular basis;

(5) a foreclosure sale of realty conducted personally by a trustee under a recorded deed of trust;

(6) a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee of such mortgagee or other secured party acting in the course and scope of his employment, under a recorded chattel mortgage or other security agreement; or

(7) a sale conducted by sealed bid.

Application

Sec. 3.²² (a) Each person applying for an auctioneer's license shall apply to the commissioner on forms provided by the commissioner and accompany such application with the required bond, the required license fee, and the limited sales tax permit number issued by the comptroller of public accounts of this state.

(b) Consent to suit in this state by nonresident licensees. Every nonresident applicant for a license under this Act shall file with the commissioner, as part of the application for a license, a written irrevocable consent that actions growing out of any transaction subject to this Act may be commenced against the licensee in the proper court of any county of this state in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the commissioner as the licensee's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service has been made upon the person according to the laws of this or any other state; and such instrument shall be in such form and supported by such additional information as the commissioner may by rule require.

Fees

Sec. 4.²³ (a) The annual fee for each auctioneer's license issued by the commissioner to a resident of this state is \$100. The annual fee for each auctioneer's license issued by the commissioner to a nonresident is \$300. The commissioner shall issue the license upon receipt of payment of all license fees. All licenses expire annually on the last day of December of each year and shall be renewed upon the receipt of the written request of the licensee and the required license fee.

(b) The commissioner shall annually prepare and deliver to each licensee a license certificate and pocket card.

(c) All fees shall be paid to the state treasury and placed in the General Revenue Fund.

Bond

Sec. 5.²⁴ (a) Each application for an auctioneer's license must be accompanied by a surety or cash performance bond in the principal amount of \$5,000 and shall be in conformity with the Insurance Code.

(b) The bond shall be payable to the state for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the state, or any political subdivision thereof in any suit for damages, penalties, or expenses, including rea-

²² Vernon's Ann.Civ.St. art. 5700, § 3.

²⁴ Vernon's Ann.Civ.St. art. 5700, § 3.

²³ Vernon's Ann.Civ.St. art. 5700, § 4.

reasonable attorney's fees resulting from a cause of action involving the licensee's auctioneering activities. The bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

Partial exemption for livestock auctioneers

Sec. 6.²⁵ The provisions of Section 5 of this Act shall not apply to livestock auctioneers who are engaged exclusively in the livestock auction business in Texas through bonded livestock auction facilities, nor shall livestock auctioneers be required to report their limited sales tax permit number as set forth in Section 3(a).

Denial, suspension, or revocation of license

Sec. 7.²⁶ The commissioner may deny, suspend, or revoke the license of any auctioneer for any of the following causes:

- (a) for obtaining a license through false or fraudulent representation;
- (b) for making any substantial misrepresentation in an application for an auctioneer's license;
- (c) for a continued and flagrant course of misrepresentation or for making false promises through agents, advertising, or otherwise;
- (d) for failing to account for or remit, within a reasonable time, any money belonging to others that comes into his possession and for commingling funds of others with his own or failing to keep such funds of others in an escrow or trustee account;
- (e) for conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony;
- (f) for violation of any rule or regulation of the department; or
- (g) for any conduct of an auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.

Investigation of complaint; action

Sec. 8.²⁷ The commissioner may, upon his own motion, and shall, upon the written complaint of any person, investigate alleged violations of this Act by any licensed or unlicensed auctioneer or any applicant.

Rules and regulations; hearing of testimony

Sec. 9.²⁸ The commissioner may make reasonable rules and regulations relating to the form and manner of filing applications for licenses, the issuance, denial, suspension, and revocation of licenses, and the conduct of hearings consistent with the provisions of The Administrative Procedures Act. The commissioner or other person authorized by him may administer oaths and hear testimony in matters relating to the duties imposed on the commissioner.

Advertising an auction

Sec. 10.²⁹ Any licensed auctioneer who advertises to hold or conduct an auction shall indicate in such advertisement his name, address,

²⁵ Vernon's Ann.Civ.St. art. §100, § 6.

²⁶ Vernon's Ann.Civ.St. art. §700, § 7.

²⁷ Vernon's Ann.Civ.St. art. §100, § 8.

²⁸ 1 Tex. Stat. 2582a-2582b-2582c.

²⁸ Vernon's Ann.Civ.St. art. §100, § 9.

²⁹ Vernon's Ann.Civ.St. art. §700, § 10.

and such other reasonable information as the commissioner may by rule require.

Penalties

Sec. 11.³⁰ (a) Whoever acts as an auctioneer as defined in this Act without first obtaining a license commits a Class B misdemeanor.

(b) Whoever violates any other provisions of this Act or any rule or regulation promulgated by the commissioner in the administration of this Act, for the violation of which no other penalty is provided, commits a Class C misdemeanor.

Sec. 12. Section (1) of Article 19.01, Chapter 19, Title 122A, Revised Civil Statutes of Texas, 1925, as amended, is repealed.³¹

Emergency

Sec. 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect in accordance with its provisions, and it is so enacted.

Passed by the House on May 7, 1975, by a non-record vote; and that the House concurred in Senate amendments to H. B. No. 1925 on May 23, 1975, by a non-record vote; passed by the Senate, with amendments, on May 21, 1975, by a viva-voce vote.

Approved May 27, 1975.

Effective Sept. 1, 1975, 90 days after date of adjournment.

NIXON HOSPITAL DISTRICT—CLINIC

CHAPTER 321

H. B. No. 2018

An Act amending Section 3, Chapter 644, Acts of the 59th Legislature, Regular Session, 1965, relating to the authority of the Nixon Hospital District of Gonzales and Wilson Counties, Texas; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 3, Chapter 644, Acts of the 59th Legislature, Regular Session, 1965, is amended³² to read as follows:

"Sec. 3. The District authorized to be created by this Act is charged with the responsibility of establishing a hospital or a hospital system or a clinic within its boundaries to furnish hospital and medical care to the residents of the District. After this District is created as provided in Section 4 of this Act, no other municipality or political subdivision of this State may levy taxes or issue bonds or other obligations of indebtedness for the purpose of providing hospital service or medical care within the Dis-

30. Vernon's Ann.Civ.St. art. 8700, § 11.

31. V.A.T.S. Tax.-Gen. art. 19.01, § (1), repealed.

32. Vernon's Ann.Civ.St. art. 4494a note.